

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

&

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 17TH OCTOBER 2007 / 25TH ASWINA 1929

WP(C).No. 20772 of 2007(W)

PETITIONER:

**MOHAMMED KUTTY, S/O.AHAMMED,
VALIYAPEEDIYAKKAL, VALAVANNOOR AMSOM DESOM,
TIRUR TALUK.**

BY ADV. SRI.K.K.MOHAMED RAVUF

RESPONDENTS:

**1. HYDRU, S/O.KUNHEEDU, S/O.KUNHEEDU,
MEETTAPPARAMBAN HOUSE, VALAVANNUR AMSOM DESOM,
TIRUR TALUK.**

**2. THE STATION HOUSE OFFICER,
KALPAKANCHERY POLICE STATION, KALPAKANCHERY,
TIRUR TALUK.**

**BY ADV. SRI.TOM K.THOMAS
BY GOVERNMENT PLEADER SRI.SALIM P.A.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 17/10/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

W.P.(C) NO.20772/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE PLAINT.

EXT.P2:- COPY OF THE PETITION IA. NO.8/05 IN OS. NO.2/05.

EXT.P3:- COPY OF THE ORDER DT. 8.4.05 IN IA. NO.8/05 IN OS. NO.2/05.

EXT.P4:- COPY OF THE PETITION IA. NO.1051/05.

EXT.P5:- COPY OF THE JUDGMENT DT. 5.8.05.

EXT.P6- COPY OF THE JUDGMENT DT. 27.11.06 IN WP(C) NO.25593/05.

EXT.P7:- COPY OF THE APPLICATION FOR POLICE ASSISTANT.

EXT.P8:- COPY OF THE COMMISSION APPLICATION.

EXT.P9:- COPY OF THE COMMISSION REPORT.

EXT.P10:- COPY OF THE PETITION FILED BEFORE THE 2ND RESPONDENT

/TRUE COPY/

P.A. TO JUDGE

tss

K.BALAKRISHNAN NAIR & T.R.RAMACHANDRAN NAIR, JJ.

Writ Petition (C) No.20772 of 2007-W

Judgment

Balakrishnan Nair, J.

The petitioner and the 1st respondent own contiguous plots of land. The petitioner's claim for a right of way through the 1st respondent's property on being resisted, he filed Ext.P1 suit before the Munsiff's Court, Tirur. The Court passed an interim order of mandatory injunction in favour of the petitioner. The said order was challenged unsuccessfully before the appellate court and this Court. Later, the Munsiff's court executed the said order and the obstruction was removed and the police was also addressed to render assistance. Subsequently, the petitioner submits, again the pathway is obstructed and on his application, a Commissioner was deputed and the Commissioner has filed Ext.P9 report, substantiating his submissions regarding the second round of obstruction. It is common case that the petitioner has moved an application for prosecuting the 1st respondent for violation of the injunction order and also an application to address the Police to enforce the injunction order. Another IA is also filed for restoration of the pathway by removing the obstruction. While so,

the petitioner has filed Ext.P10 representation before the Police seeking protection for using the pathway without any obstruction from the 1st respondent and thereafter, this Writ Petition is filed, seeking appropriate reliefs.

2. We heard the learned counsel for the 1st respondent, who opposes the application for police protection for the reason that the matter is pending before the civil court. The learned Government Pleader submitted that this being a civil court, the Police cannot interfere in the matter. In answer, the learned counsel for the petitioner submitted that if the obstruction continues endlessly, the only course open to him is to move the Police for help. Having regard to the nature of the dispute, we feel that the Munsiff's Court should decide whether the 1st respondent has obstructed the petitioner from using the pathway in violation of the injunction order. If it is found that there is obstruction, defying the order of the Munsiff's Court, the Court has got ample powers to remedy the same. It can also address the Police to enforce its orders. When the matter is pending before the civil court, we feel that the Police should not suo motu, on receiving a representation from the petitioner, interfere in the matter. If the Police owe such a duty to the petitioner now and it is failing to perform it, then only this Court can interfere under this Police

Protection jurisdiction. Therefore, we order that the Police need interfere in the matter, if only appropriate orders for the same are issued by the learned Munsiff. Needless to say, this direction will not affect the powers of the Police to investigate any cognizable offence reported. The learned counsel for the petitioner prays that the Munsiff's Court may be directed to dispose of the Interlocutory Applications pending before it, which are filed by him. The petitioner may move for early hearing of those applications before the Munsiff's Court itself.

The Writ Petition is disposed of with the above observations.

K.BALAKRISHNAN NAIR,JUDGE

17.10.2007

T.R.RAMACHANDRAN NAIR, JUDGE

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